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Honorable Edward J. Markey  
Chairman, Subcommittee on  
Telecommunications & Finance  
Committee on Energy & Commerce  
House of Representatives  
316 Ford House Office Building  
Washington, D.C. 20515

Dear Chairman Markey:

Thank you for your recent letter regarding the Commission's Interim Report on Sports Programming Migration and the continuing issue of the trends in broadcasting and cablecasting of sports programming.

I share many of your concerns and appreciate the directions you have provided regarding the Commission's proper focus as it develops its Final Report for submission next year. I have asked the staff to carefully review the matters you raise as our analysis of this important issue proceeds.

Sincerely,

James H. Quello  
Chairman

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**U.S. House of Representatives****Committee on Energy and Commerce****SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE****Washington, DC 20515-6119**DAVID H. MOULTON  
CHIEF COUNSEL AND STAFF DIRECTOR

July 22, 1993

The Honorable James H. Quello  
 Acting Chairman  
 Federal Communications Commission  
 1919 M Street, N.W.  
 Washington, D.C. 20554

Dear Chairman Quello:

I am writing in regard to the Commission's Interim Report on Sports Programming Migration submitted to Congress on July 1, 1993, as required by the Cable Consumer Protection and Competition Act of 1992. While I understand this report is only a first step in the process of evaluating the trends in sports programming, I would strongly urge the Commission to evaluate this subject rigorously in its final report and to provide a thorough analysis of what the future of sports programming is likely to bring.

Specifically, I would urge the Commission to examine the following points:

1. The Interim Report defines sports migration "as the movement of sports programming from broadcast television to a subscription medium." While this is a reasonable definition of the term "migration," I believe the Commission should look more broadly at the trends in sports programming. As the report notes, "there is no question that the number of sports events shown on cable television has increased since 1980." Indeed, according to the Office of the Commissioner of Baseball, the number of Major League Baseball (MLB) games broadcast on free TV from 1982 to 1992 rose from 1,554 to 1,654, a 6.4 percent increase, while the number of games on cable rose from 400 to 1,268, a 212 percent increase. In 1989, 26 games were carried on network television; today, only 16 games are carried each season and the new television contract calls for 12 in 1994. And, according to "Broadcasting & Cable" magazine, the National Basketball Association (NBA) increased its free TV games by 49 percent, but increased cable games by 180 percent. These numbers suggest that while cable television has provided sports fans with a myriad of new choices (many of which may not have been otherwise available) and while actual migration on national level may have been slight, the overwhelming number of new offerings have appeared on pay rather than free, over-the-air television. I would urge the Commission not to ignore this important evidence in evaluating the sports programming issue.

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2. Rather than focus solely on overall league statistics, the Commission should carefully look at trends on the local franchise level, particularly in baseball, basketball, and hockey. For instance, the New York City Department of Telecommunications and Energy stated in its filing that the number of free TV broadcasts of New York Knicks basketball games fell from a high of 27 in 1986 to the current level of two, while the number of games on the team's local cable outlet increased from 53 in 1986 to 78 in 1992. The New York Rangers' free TV broadcasts decreased from 29 in 1986 to 7 in 1992, while cable telecasts increased from 53 to 75. In 1990, the Yankees agreed to a deal with the Madison Square Garden Network to put all games on cable television but later reversed their plan in the face of mounting fan opposition. Similar patterns have developed in other major markets. In 1981, all of the Chicago White Sox games were moved to cable television; lack of fan support later pushed many of those games back on free TV. Despite the failure of experiments like these, some teams continue to shift most games to cable. According to "Broadcasting & Cable" magazine, for instance, only seven Philadelphia 76ers games were carried on broadcast TV this past season. The Commission should look closely at local franchises and establish whether there is an emerging trend toward less games on over-the-air television.

3. The Commission should look separately at pay-per-view (PPV) coverage and its potential impact on future sports programming. PPV can be a plus for consumers if it adds choices not previously available but it should not be used to subtract games from the free, over-the-air schedule. Already, PPV has been used during the playoffs by several local franchises, including the Chicago Blackhawks, the (former) Minnesota North Stars, and the Portland Trailblazers. In addition to exclusive showings of their playoff games, the Trailblazers offered 22 of their games on PPV in 1992. The Philadelphia Phillies attempted to show their season opener on PPV in 1992 but abandoned the plan after fans opposed it vigorously.

Despite fan opposition to many PPV experiments, PPV plans continue to be considered by individual teams and by league officials in at least some sports. Eddie Einhorn, the co-owner of the Chicago White Sox, admitted in a May 1993 newspaper report that the subject of PPV playoff games had been raised earlier in the year in owners meetings. (Baseball's acting commissioner has since assured Congress that no playoff games will be offered on a PPV basis for the rest of the decade.) In a June 1993 newspaper story, Seth Abraham, HBO sports chief, said he would attempt to secure NFL

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rights to air some NFL games on his premium channel in the future. While the Commissioners of the four major professional sports have made a commitment to keep all championship games on free network television until at least the year 2000, serious questions remain about the future of PPV in sports and the role of new television contracts in providing an artificial demand for such services by limiting games previously seen over-the-air. The Commission should thoroughly evaluate this issue, particularly in light of the new baseball television contract and soon-to-be-negotiated football and basketball contracts.

4. The Commission should give considerable scrutiny to college football contracts and their effect on local viewing opportunities, focusing particularly on preclusive contracts and their role in, as the 1992 Cable Act states, "artificially and unfairly" restricting the supply of local coverage of college sports and in making PPV schemes more attractive. Partly as a result of these contracts, several teams have tried or are in the process of trying PPV on the local level, including such major college football teams such as the University of Tennessee, the University of Arkansas, University of Miami, Louisiana State, and Notre Dame. The Chicago Tribune reported in 1991 that the most successful of these PPV offerings is Louisiana State University's "Tigervision" which has earned as much as \$500,000 in one year and attracted more than 11,000 subscribers at prices that have ranged as high as \$29.95 per game. ABC and Showtime Event Television formed a partnership last year to distribute college football games on a PPV basis for \$8.95 and \$9.95 per game but failed to attract significant numbers of viewers.

The Commission should examine closely the trend in National Collegiate Athletic Association (NCAA) programming and the impact of preclusive contracts. The FCC should also ascertain the likelihood of future PPV success in both college football and basketball. Finally, the Commission should evaluate the likelihood that new sports cable channels (such as ESPN2 and the recently announced NBC/Continental Cablevision joint venture) will use PPV schemes.

5. The Commission should assess how the advent of 500-channel systems and other video-on-demand configurations will affect sports programming and the availability of free, over-the-air games. Some experts suggest these systems will soon allow consumers to view movies-on-demand for less than two dollars and prime time programming on-demand for as little as fifty-nine cents. If viewers become accustomed to this kind of pricing system, what is the likelihood that sports programming also will

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be offered on an "a la carte", on-demand basis? Do any of the major sports leagues have plans for such a market configuration? What impact will ESPN2 and other new cable sports channels have on sports programming in the short- and long-term? Do these new channels suggest further evidence of a trend toward additional pay programming?

6. The Commission should conduct its own study of anti-trust exemptions and their impact on the sports programming market. These exemptions have had a profound effect on sports programming by allowing the leagues to set artificially supply and demand in the market. While these rules may ultimately benefit the public interest, they should be scrutinized closely in light of the trend of the major sports leagues and individual teams to expand their pay television offerings while cutting or only slightly increasing their free TV games.

The Commission's Interim Report is an important first step in our attempt to get a better handle on trends in sports programming. Given the considerable public benefits bestowed on the major sports leagues and on colleges and universities, I believe this is an important subject which deserves the Commission's closest scrutiny and most thoughtful analysis. I look forward to the final report next summer.

Sincerely,

A handwritten signature in black ink, reading "Edward J. Markey". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Edward J. Markey  
Chairman